In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 98

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

METROPOLITAN LIFE INSURANCE COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

REPLY BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

1. The Company contends (Co. Br. 15–17, 24) that the only difference between the Board's practice in determining appropriate bargaining units for insurance agents prior to 1944 (when it established state-wide units) and its practice now, is that previously it acknowledged that it was relying on extent of organization, whereas now it relies on that factor *sub silentio*. We submit that the Company's contention rests on an erroneous premise. To be sure, in many of the cases prior to *Metropolitan Life Ins. Co.*, 56 NLRB 1625 (1944),[1] the Board, in establishing units

[1] In that case, the Board announced that it would not establish units for insurance agents smaller than state-wide in scope. Extent of organization was a factor in this decision, no less than in the preceding cases. See *Colonial Life Insurance Co.*,

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ex[illegible]ng of a single district office, or groupings thereof, laid stress on the fact that the union had organized no further (see Co. Br. 16–17).[1] But at that time it was entirely proper for the Board to give controlling weight to extent of organization, and there was thus no occasion for it to consider whether the units were appropriate on other grounds as well. In 1961, when the Board, in *Quaker City Life Insurance Co.*, 134 NLRB 960, decided to abandon the artificial *Metropolitan* rule and to apply to insurance agents the same principles that it had been applying in other industries, it found that those principles permitted the establishment of smaller units for insurance agents without giving controlling weight to extent of organization (see Bd. Main Br. 15–22). In these circumstances, no adverse inference can be drawn from the fact that the units now established by the Board are in many respects similar to those which the Board established prior to 1944.

Nor is a different conclusion required by the circumstance that Section 9(c)(5) was opposed on the ground that it would impair the establishment of bargaining units in many industries, including insurance, where organization could proceed only on a piecemeal basis (Co. Br. 18). The fears of the opponents of a statutory provision are not a reliable guide to its meaning. See *National Labor Relations Board* v. *Fruit and Vegetable Packers*, 377 U.S. 58, 66. Moreover, Senator Taft, in

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42 NLRB 1177, 1180–1183 (1942); *Metropolitan Life Insurance Co.*, 43 NLRB 962, 969–970 (1942) (dissent of Member Reilly).

[1] Cf. however, the analysis of the facts concerning the distinctive nature of the district office, in *John Hancock Mutual Insurance Co.*, 26 NLRB 1024, 1033–1034 (1940).

reply to this contention, specifically stated that Section 9(c)(5) would not preclude the establishment of small units in industries like insurance, for such a unit might be justified on the basis of the other tests which the Board had evolved for determining appropriate units (Bd. Main Br. 13). In short, the purpose of Section 9(c)(5) was simply to prevent the Board from approving a unit which could be found appropriate on no other ground than that it coincided with the extent of union organization. It was not intended to interdict any particular form of unit which the Board had previously established even though it may have been based on extent of organization, provided the Board, on a reexamination of all the relevant facts, were now able to find that such unit satisfied other traditional criteria of appropriateness.

2. Contrary to the Company (Br. 34–36), the Board's practice in establishing units in the insurance industry under its *Quaker City* policy is consistent with its practice in establishing units in other industries. Thus in the case of multi-plant manufacturing concerns, the Board has found a single plant unit to be appropriate where the degree of separateness and autonomy of the plant was not substantially different from that of the individual district office in the insurance industry; and its reasons for declining to group that plant with other plants owned by the same company have been essentially the same as its reasoning in the insurance cases. See *General Shoe Corp.*, 109 NLRB 618, 619–621. See also, *e.g.*, the following cases in which the Board, while acknowledging that a larger unit might also

have been appropriate, found a single plant unit to be appropriate in view of the geographical separation between plants, the existence of intermediate supervision at the plant level, the lack of prior bargaining history on a multi-plant basis, and the fact that no union was seeking the larger unit: *Rose Marie Reid*, 103 NLRB 498 (company had 2 plants in Los Angeles, California, about 15 miles apart, both under centralized control); *Harris Langenberg Hat*, 106 NLRB 19, enforced 216 F. 2d 146 (C.A. 8) (company had 5 plants, the nearest 10 miles away, all under centralized administration and labor relations policy); *Wm. R. Whittaker Co., Ltd.*, 117 NLRB 339 (company had 2 plants within 20 miles of each other in California, both under centralized administration and labor relations policy); *Temco Aircraft Corp.*, 121 NLRB 1085 (company had 3 plants near Dallas, Texas, within 40 miles of each other, all under central administration and labor relations policy); *American Linen Supply Co., Inc.*, 129 NLRB 993, (company had laundries in New Haven, Stamford and Hartford, Connecticut and Springfield, Massachusetts, within 35 to 60 miles of each other, all under centralized management and labor relations policy).[3]

[3] The traditional criteria applied by the Board in the insurance industry since *Quaker City* are not the criteria previously used in the retail chain store field (Co. Br. 30-34); rather, they are the ones developed in dealing with multi-plant manufacturing concerns (Bd. Main Br. 18-19). Indeed, at about the same time as *Quaker City*, the Board in *Sav-On-Drugs*, 136 NLRB 1062, changed the rules the Company notes in its brief (Co. Br. 31-33), and the Board now applies the same basic

CONCLUSION

For these reasons, as well as those set forth in our opening brief, the judgment of the court below should be reversed and the case remanded with directions to enforce the Board's order in full.

Respectfully submitted,

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JANUARY 1965.

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rules developed in the manufacturing field to retailing as well as insurance.

The other cases cited by the Company (Co. Br. 35–36), are inapposite. The Board rejected a single plant unit in *Murray Corp. of America*, 101 NLRB 318, and *Briggs Manufacturing*, 101 NLRB 284, because the evidence in both cases indicated prior bargaining on a multi-plant basis and an interchange of employees between the plants. Neither of these factors indicating the propriety of a larger unit is present in the instant case (Bd. Br. 6, 7).

U.S. GOVERNMENT PRINTING OFFICE : 1965